

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JUE ZHANG,  
Plaintiff,

v.

SHRAGA N. GOLDBERG, M.D.,  
Defendants.

C.A. NO. 04-12735PBS

**MOTION OF THE DEFENDANT, SHRAGA N. GOLDBERG, M.D.,  
FOR COURT ORDERS TO OBTAIN DOCUMENTS FROM THE  
DEPARTMENTS OF THE UNITED STATES GOVERNMENT**

**INTRODUCTION**

NOW COMES, the defendant, Shraga N. Goldberg, M.D. ("defendant"), and hereby requests that the Court execute the proposed Orders (attached to the Memorandum) to obtain files of the plaintiff and her husband from the following: (1) U.S. Department of State, Office of Information Programs and Services and; (2) Department of Homeland Security, U.S. Citizenship and Immigration Services. As reasons therefore, the defendant relies on the discussion in the Memorandum filed with the Court contemporaneously pursuant to USDC Local Rule 7.1(B)(1).

For the Defendant,  
Shraga N. Goldberg, M.D.,  
By his attorneys,

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document  
was served upon the attorney of record for each other  
party by (hand) (mail) on 5/10/06

Sidney W. Adler, BBO #012660  
Jennifer Boyd Herlihy, BBO #636815  
Adler, Cohen, Harvey, Wakeman  
& Guekguezian, LLP  
75 Federal Street, Tenth Floor  
Boston, MA 02110  
(617) 423-6674

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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JUE ZHANG,

Plaintiff,

v.

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SHRAGA N. GOLDBERG, M.D.,

Defendants.  
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**MEMORANDUM IN SUPPORT OF THE  
MOTION OF THE DEFENDANT, SHRAGA N. GOLDBERG, M.D.,  
FOR COURT ORDERS TO OBTAIN DOCUMENTS FROM THE  
DEPARTMENTS OF THE UNITED STATES GOVERNMENT**

**INTRODUCTION**

NOW COMES, the defendant, Shraga N. Goldberg, M.D. (“defendant”), and hereby requests that the Court execute the proposed Orders (attached hereto as **Exhibit A**) to obtain the files of the plaintiff and her husband from the following: (1) U.S. Department of State, Office of Information Programs and Services and; (2) Department of Homeland Security, U.S. Citizenship and Immigration Services. As reasons therefore, the defendant states the following:

**FACTS**

1. This is a medical malpractice action filed by the plaintiff in which she alleges the defendant caused a delay in the diagnosis of tuberculosis in her spine that led to unnecessary surgery and damages.
2. The plaintiff and her husband, Yun Long, were both born and resided in China until they immigrated to this country in 1997.
3. The plaintiff and her husband would have provided health information and undergone medical testing prior to entering the Country at that time, which should have included information or testing on the status of tuberculosis, but she could not recall at her deposition. See Deposition of the Plaintiff attached as **Exhibit B** at 27-30.

4. The plaintiff received a positive tuberculosis test when entering graduate school at Northeastern University in approximately 1998. See Deposition of the Plaintiff attached as **Exhibit B** at 30.
5. The plaintiff has also undergone many changes in her visa status and would have provided information on the status of her tuberculosis on her re-applications at diverse dates since 1997. See Deposition of the Plaintiff attached as **Exhibit B** at 37.
6. Any tuberculosis test results of the plaintiff, as well as any information provided on the status of her tuberculosis (or the status of her husband's tuberculosis), which was made to any United States agency for the purposes of immigration are relevant to the case.
7. Further, any medical records, if any, that were provided to those agencies in support of the fact they did not have tuberculosis would be relevant to the case.
8. Lastly, the information provided in the applications is under oath and may go towards the veracity of the plaintiff.
9. Although counsel for the plaintiff has provided other Authorizations in good faith during the course of this litigation, he would not agree to this Authorization. See Certificate under LR 7.1 filed contemporaneously with this pleading.

### **ARGUMENT**

There can be no doubt that in this malpractice action, the requested records are relevant to the plaintiff's claims and essential to the defense thereof. The plaintiff's records are indispensable to any evaluation of the care and treatment provided by the defendant and whether that treatment has any relationship to the alleged delay in diagnosis. Any information recorded by the United States entities will be critical in evaluating the element of causation. Further, the records do not appear to be covered by any privilege, such as a patient-psychotherapist privilege, that would require any additional balancing tests.

The defendant will be severely prejudiced if the records and information requested are not disclosed. Denying the defendant access to the records may well impair access to available defenses against the plaintiff's claims. The requested records contain information that is probative of the facts surrounding the claim. Further, these documents were signed under oath and may be relevant to the veracity of the plaintiff's deposition testimony.

### CONCLUSION

WHEREFORE, the defendant requests that this Court execute the Orders attached as **Exhibit A.**

### REQUEST FOR ORAL ARGUMENT

Should it assist the Court, the defendant requests an oral argument on the matter pursuant to USDC Local Rule 7.1(D).

For the Defendant,  
Shraga N. Goldberg, M.D.,  
By his attorneys,

Sidney W. Adler, BBO #012660  
Jennifer Boyd Herlihy, BBO #636815  
Adler, Cohen, Harvey, Wakeman  
& Guekguezian, LLP  
75 Federal Street, Tenth Floor  
Boston, MA 02110  
(617) 423-6674

**CERTIFICATE OF SERVICE**  
I hereby certify that a true copy of the above document  
was served upon the attorney of record for each other  
party by (hand / mail) on 5/10/06

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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| JUE ZHANG,                | ) |                      |
| Plaintiff,                | ) |                      |
|                           | ) |                      |
| v.                        | ) | C.A. NO. 04-12735PBS |
|                           | ) |                      |
| SHRAGA N. GOLDBERG, M.D., | ) |                      |
| Defendants.               | ) |                      |
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**ORDER FOR INSPECTION AND COPYING OF RECORDS**

It is hereby ordered that the Keeper of Records for the U.S. Department of State, Office of Information Programs and Services, A/ISS/IPS/RL, U.S. Department of State, SA-2, Washington, D.C. 02522-8100, or the person or persons in charge of these records, shall furnish to Jennifer Boyd Herlihy, Esq., of Adler, Cohen, Harvey, Wakeman & Guekguezian, LLP, 75 Federal Street, Floor 10, Boston, MA, 02110, as Attorney for the Defendant, complete copies of any and all records concerning or relating to Jue Zhang, SSN: 026-82-5752, DOB: 12/6/73, Country of Birth: China, including but not limited to visa, consular, passport, and medical records, upon the payment of a reasonable fee.

By the Court

\_\_\_\_\_  
Justice of the District Court

Dated: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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By the Court

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Justice of the District Court

Dated: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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| Defendants.               | ) |                      |
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**ORDER FOR INSPECTION AND COPYING OF RECORDS**

It is hereby ordered that the Keeper of Records for the Department of Homeland Security, U.S. Citizenship and Immigration Services, FOIA/PA, 111 Massachusetts Avenue, Washington, D.C. 20529, or the person or persons in charge of these records, shall furnish to Jennifer Boyd Herlihy, Esq., of Adler, Cohen, Harvey, Wakeman & Guekguezian, LLP, 75 Federal Street, Floor 10, Boston, MA, 02110, as Attorney for the Defendant, complete copies of any and all records concerning or relating to Jue Zhang, SSN: 026-82-5752, DOB: 12/6/73, Country of Birth: China, including but not limited to records relating to pending applications, visa petition approval, records of naturalization, and proof of status, upon the payment of a reasonable fee.

By the Court

\_\_\_\_\_  
Justice of the District Court

Dated: \_\_\_\_\_



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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By the Court

\_\_\_\_\_  
Justice of the District Court

Dated: \_\_\_\_\_

**EXHIBIT B**

ORIGINAL

1

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PAGES 1 - 155  
EXHIBITS: 1 - 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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JUE ZHANG,  
Plaintiff,

vs.

SHRAGA N. GOLDBERG, M.D.,  
Defendant

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\* C.A. NO.  
\* 04-12735PBS  
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**DEPOSITION OF JUE ZHANG**, a witness called on behalf of the Defendant, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure before Deanna L. Veinotte, CSR #100293, Registered Professional Reporter and Notary Public within and for the Commonwealth of Massachusetts, at the offices of Adler, Cohen, Harvey, Wakeman & Guekguezian, 75 Federal Street, Boston, Massachusetts, on Friday, February 17, 2006, commencing at 11:00 a.m.

EPPLEY COURT REPORTING  
Post Office Box 382  
Hopedale, Massachusetts 01747  
(508) 478-9795 (508) 478-0595 (Fax)  
leppey@msn.com

1 Q. There would be no employment records?

2 A. Uh-huh.

3 Q. That's correct?

4 A. Yeah.

5 Q. Okay. Prior to coming here from  
6 China, had you ever been hospitalized?

7 A. Being in China have I ever been --

8 Q. Hospitalized?

9 A. Not that I remember, no, not that kind  
10 of thing. I was very healthy.

11 Q. That was my question if you had any  
12 previous medical history before coming to the  
13 United States in 1997?

14 A. No.

15 Q. And then when you did come to the  
16 United States you had to take a tuberculosis  
17 test; is that correct?

18 A. I think I took at Northeastern  
19 University.

20 Q. At Northeastern for admission?

21 A. Yeah.

22 Q. You didn't have to do it before you  
23 came to the United States?

24 A. I think I did. I have some exams

1 before I leave country we have required --  
2 they're required, foreign country, for that  
3 type of exams.

4 Q. Okay.

5 A. But I don't know detail what they are  
6 and I forgot already.

7 Q. Why don't we mark this as Exhibit 1.

8 (Exhibit 1, Answers to  
9 Interrogatories, so marked.)

10 Q. I'm going to show you what we've  
11 marked as Exhibit 1 and ask you to look at the  
12 last page and tell me if that's your signature?

13 A. Yes.

14 Q. And just for the record, what date is  
15 that?

16 A. January 20.

17 Q. Did you review these answers before  
18 signing them?

19 A. Yes.

20 Q. And you ensured that they were  
21 accurate?

22 A. Yes.

23 Q. I'm going to have you turn to answer  
24 No. 22. If you see 22B indicates that you took

1 a required medical exam including a chest x-ray  
2 and blood test before coming to the United  
3 States?

4 A. Uh-huh.

5 Q. Does that refresh your memory as to  
6 what was required before you came to this  
7 country?

8 A. I took required medical exam before I  
9 came to the United States and everything is  
10 normal.

11 Q. Okay. And do you remember undergoing  
12 those tests?

13 A. Whatever they required I think I took.

14 Q. Do you remember getting a chest x-ray?

15 A. I'm not sure.

16 Q. Okay.

17 A. Supposed to. That's what I think.  
18 That's why I think that's right. Supposed to,  
19 I don't know. See, too many years.

20 Q. Do you have any records that would  
21 show that you had a chest x-ray?

22 A. Northeastern when I apply to the  
23 school, I submit my exams about this one.

24 Q. That's fine. I'll do an authorization

1 to your counsel requesting your medical chart  
2 from Northeastern.

3 A. Okay.

4 Q. Is that where you also think you had  
5 your first TB test?

6 A. Yes, the first TB skin.

7 Q. That wasn't required before you came?

8 A. I don't remember. You need to check  
9 the record. Based on memory, I don't remember.

10 Q. I will check the record. I'm just  
11 asking if you have a memory of having a TB test  
12 before 1999?

13 A. Not in the United States.

14 Q. Do you remember receiving a TB  
15 positive?

16 A. Yeah, at school I remember.

17 Q. And what did they tell you about that?

18 A. They tell me to take some antibiotics.

19 Q. Did you get a prescription for  
20 antibiotics?

21 A. No.

22 Q. And why is that?

23 A. I don't know. Actually, I also  
24 don't -- right now step back, I forget whether

1 Q. Any plans as we sit here today?

2 A. Pardon me?

3 Q. Any definite plans to return?

4 A. No. I need visa. We're in the  
5 process of green card application, after we got  
6 that.

7 Q. Can you leave if you don't have your  
8 green card and come back or no?

9 A. Lawyer would not suggest that.

10 Q. So you're not a citizen as we are here  
11 today?

12 A. No.

13 Q. And how are you in this country? What  
14 is the status?

15 A. I'm keeping lots of visa type. From  
16 beginning before I study in Northeastern, I'm a  
17 spouse of student, that is F2 visa, then I  
18 transfer, F1, visa, student visa, then I work,  
19 H1 visa.

20 Q. Which is because you were working for  
21 EMC?

22 A. Yeah, H1B, then I didn't work but my  
23 husband work, I hold H4 visa. Then I change  
24 back to F1 visa, student visa again.



